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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/635,330	08/09/2000	Luis Eduardo Gutierrez-Sheris	25153-003	5198

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COWAN, LIEBOWITZ & LATMAN, P.C.
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER

KARMIS, STEFANOS

ART UNIT PAPER NUMBER

3624

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/635,330

Applicant(s)GUTIERREZ-SHERIS, LUIS
EDUARDO**Examiner**

Stefano Karmis

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following communication is in response to Applicant's amendment filed on 07 November 2005.

Status of Claims

2. Claims 1-7 and 9-17 are originally filed. Claims 8 and 18-32 are previously presented. Claims 33-61 are newly added.

Response to Arguments

3. Applicant's arguments filed 07 November 2005 have been fully considered but they are not persuasive. Therefore claims 1-61 stand rejected and Applicant's request for allowance is respectfully declined.

Response to Amendment

4. The declaration filed on 07 November 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the O'Leary et al. (U.S. Patent 6,609,113) reference.
5. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the O'Leary et al. reference to either a constructive reduction to

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practice or an actual reduction to practice. The period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses. *Rebstock v. Flouret*, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975); *Rieser v. Williams*, 225 F.2d 419, 423, 118 USPQ 96, 100 (CCPA 1958). The declaration fails to account for the time period and therefore diligence is lacking. Specifically, there is no statement regarding time periods from May 3, 1999 when the invention was conceived until it was filed on 05 January 2000 sufficient to established diligence. The entire period during which diligence is required must be accounted for and a 2-day period lacking activity has been held to be fatal when accounting for the period in which diligence is required. *In re Mulder*, 716 F. 2d 1542, 1545, 219 USPQ 189, 198 (Fed. Cir. 1983)(37 CFR 1.131 issue). Therefore diligence is lacking and the declaration under 37 C.F.R. 1.131 is ineffective.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. (hereinafter O'Leary) U.S. Patent 6,609,113 in view of Downing et al. (hereinafter Downing) U.S. Patent 5,963,647 in further view of Tadesco et al. (hereinafter Tadesco) U.S. Patent 6,085,888.

Claims 1-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. (hereinafter O'Leary) U.S. Patent 6,609,113 in view of Downing et al. (hereinafter Downing) U.S. Patent 5,963,647 in further view of Tadesco et al. (hereinafter Tadesco) U.S. Patent 6,085,888 as stated in the previous office action, mailed 05 May 2005. Applicant submitted to additional arguments with respect to the 35 U.S.C. 103(a) rejection, and therefore the rejection from the previous office action stands. Claims 33-61 do not include arguments pointing out specific distinctions believed to render the added new claim are patentable over the applied references. Claims 33-61 contain limitations similar to claims 1-32 and therefore stand rejected in a similar manner to that of claims 1-32. Therefore claims 1-61 are rejected and Applicant's request for allowance is respectfully declined.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (571) 272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted
Stefano Karmis
21 January 2006

VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

A handwritten signature in black ink, appearing to read "Vincent Millin", is positioned below the printed name and title.